

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
PECOS DIVISION**

UNITED STATES OF AMERICA

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V.

CAUSE NO. P-20-CR-388

THOMAS SCOTT PERKINS

**MOTION FOR MENTAL EXAMINATION OF
DEFENDANT AND ADVISORY TO THE COURT**

TO THE HONORABLE DAVID COUNTS:

NOW COMES, Thomas Scott Perkins, by and through his undersigned Attorney, and files this Motion for Mental Examination of Defendant, and would show this Honorable Court as follows:

I

Mr. Perkins has been charged with possession and distribution of child pornography in violation of Title 18 U.S.C. §§ 2252(a)(2), 2252(a)(3)(B).

II

After meeting with Defendant and having had opportunity to observe and interact with Defendant as well as discuss his options concerning a guilty plea versus a trial and review his medical history, undersigned Counsel has reasonable cause to believe that the Defendant may be incompetent to such an extent that he cannot understand the proceedings against him or properly assist in his own defense. The Defendant is indigent and cannot afford to employ experts to examine him and to testify as to his mental condition. Without such examination, Defendant may be unable to prepare his defense adequately or to enter a voluntary and knowing plea. To represent Defendant effectively in this cause, Defendant's attorney requests, under 18 U.S.C. §

4241, that the Court order that Defendant be examined by qualified doctors of psychiatry and/or psychology. Pursuant to his rights to effective assistance of counsel and due process of law under the Fifth and Sixth Amendments of the United States Constitution, Defendant is entitled to have such examination at the expense of the United States Government.

III. Parameters of Competency Evaluation

Defendant asks that any competency evaluation ordered by the Court comply with the terms of Title 18 U.S.C. " 4241, 4247(b) & (c). Defendant specifically asks the Court to insure compliance with the 30-day maximum period for an initial competency evaluation referenced in Title 18 U.S.C. § 4247(b).

IV. Prayer and Waiver of Hearing

Wherefore, premises considered, the Defendant respectfully prays that the Court hold a hearing to determine the issues raised by this Motion and Advisory, and grant the motion for competency evaluation. Counsel for the Defendant waives any hearing regarding this Motion if the Court determines that a competency evaluation is necessary based upon this Motion.

Respectfully submitted,

MAUREEN SCOTT FRANCO
Federal Public Defender

/s/ Shane O'Neal
SHANE O'NEAL
Assistant Federal Public Defender
Western District of Texas
108 N. 10th Street
Alpine, Texas 79830
Tel. (432) 837B5598 Fax: (432) 837-9023
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Andrew Weber, Assistant United States Attorney
United States Attorney's Office
2500 Hwy 118 N., Ste. A200
Alpine, TX 79830

/s/ Shane O'Neal
SHANE O'NEAL
Attorney for Defendant

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ORDER

On this date came to be considered the Defendant's Request for Competency Evaluation, and the Court, having considered the pleadings and the premises, is of the opinion that it should be, and the same is hereby, GRANTED.

IT IS THEREFORE ORDERED that the Defendant be examined under the provisions of Title 18 U.S.C. § 4241 for a determination of his mental competency. Pursuant to the terms of Title 18 U.S.C. § 4247(b) and (c), a psychiatric or psychological examination of the Defendant shall be conducted by a licensed or certified psychiatrist or psychologist. The Court designates the following certified psychiatrist or psychologist to conduct the examination:

IT IS FURTHER ORDERED that a psychiatric or psychological report shall be prepared by the examiner designated to conduct the psychiatric or psychological examination of the Defendant. The report shall be filed with the court with copies provided to the counsel for the person examined and to the attorney for the Government, and shall include:

- (1) the person's history and present symptoms;

(2) a description of the psychiatric, psychological, and medical tests that were employed and their results;

(3) the examiner's findings; and

(4) the examiner's opinions as to diagnosis, prognosis, and whether the Defendant is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, with particular attention to the following issues:

- a) Whether or not the Defendant is presently suffering from a psychosis or mental disease or defect;
- b) Whether or not the Defendant presently has a rational, as well as a factual, understanding of the proceedings against him;
- c) Whether or not the Defendant presently has sufficient ability to consult with his attorney and to assist in his own defense with a reasonable degree of rational understanding.

IT IS FURTHER ORDERED that no statement, testimony, or evidence made or provided by the Defendant during such examination, and no testimony or report of a psychiatrist or expert based upon such statement, testimony or evidence, shall be admitted in evidence or used against the Defendant in any criminal proceedings except on an issue regarding mental competence.

IT IS FURTHER ORDERED that the United States Attorney and counsel for the Defendant shall make available to the examining psychiatrist or psychologist, any and all psychiatric, psychological and/or medical records pertaining to the Defendant.

IT IS FURTHER ORDERED that time attributable to the competency evaluation up to the 30-day maximum referenced in Title 18 U.S.C. § 4247 shall be excluded in computing the time within which Defendant's trial must commence in accordance with the Speedy Trial Act, Title 18 U.S.C. § 3161(h)(1)(A). In accordance with Title 18 U.S.C. § 3161(h)(1)(H), any delay resulting

from the transportation of the Defendant to or from the place of examination shall also be excluded for purposes of the Speedy Trial Act, except that any time consumed in excess of ten days to accomplish such transportation shall be presumed to be unreasonable.

IT IS FURTHER ORDERED that said written report be filed with the Clerk of this Court who will stamp it Received. After making the necessary docket entries, the Clerk will deliver the original report to this Court and will distribute copies of same to counsel for the Defendant and to the attorney for the Government.

So ordered on this _____ day of _____, 2019.

David Counts
United States District Judge